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No. 77-5999

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

GRACE AZNAVORIAN, ET AL., APPELLANTS

v.

JOSEPH A. CALIFANO, JR., SECRETARY OF
HEALTH, EDUCATION, AND WELFARE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MOTION TO AFFIRM

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Pursuant to Rule 16 of this Court, appellee moves to affirm the portion of the district court's judgment challenged on this cross-appeal.

The background of this case, in which the district court invalidated Section 1611(f) of the Social Security Act, 42 U.S.C. (Supp. V) 1382(f), is set forth at length in the jurisdictional statement filed in connection with the Secretary's appeal (No. 77-991) of the district court's decision. We have argued that the district court was wrong on the merits, and that it erred in ordering retroactive class relief. On this cross-appeal appellants contend that the district court too narrowly defined the class of persons to whom relief was due. This Court need not reach that issue unless it rejects all of our contentions in No. 77-991.

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Appellants assert (J.S. 9-10) that the district court erred in failing to order relief for the entire certified class.^{1/} Instead, the district court, using equitable discretion, ruled that only those class members who were then receiving Supplemental Security Income (SSI) benefits, or who would have been receiving such benefits in the absence of the allegedly unconstitutional statutory provision, were entitled to receive SSI benefits denied pursuant to the invalidated "30-day rule" of Section 1611(f) (J.S. App. 25a-26a). The district court reasoned that "retroactive benefits should go to only those who were unconstitutionally denied benefits in the past, but who are still currently needy, and thus still eligible for SSI benefits. If a person is not presently needy, then there would be no purpose served by granting him retroactive benefits. In such a situation it would appear that the payments would 'become compensatory rather than remedial'" (J.S. App. 25a).

The Secretary's view is that retroactive and class relief is unavailable in actions challenging the constitutionality of Social Security Act provisions. If, however, the district court could appropriately award retroactive class relief in this case, it certainly did not abuse its equitable discretion in granting such relief only to those who are "currently needy."

^{1/} The certified class was defined as (J.S. App. 33a):

All individuals otherwise eligible for Supplemental Security Income, who have had such SSI denied, suspended, terminated, or interrupted pursuant to an initial written determination, an administrative reconsideration, an administrative hearing, or an appeals Council review, based solely on 42 U.S.C. §1382(f) and regulations promulgated thereunder, from September 26, 1975 until the entry of this Order.

Appellants maintain (J. S. 12) that the district court had no discretion to deny retroactive benefits to certain class members, because Section 1631(b) of the Act, 42 U.S.C. (Supp. V) 1383(b),^{2/} requires the payment of all wrongfully withheld SSI benefits. But Section 1631(b) merely directs the Secretary to make retroactive payments to persons who were wrongfully denied benefits to which they were statutorily entitled. Neither Section 1631(b) nor any other provision requires the Secretary to pay retroactive SSI benefits to persons specifically excluded from such benefits under a statutory provision subsequently held unconstitutional. See DeLao v. Califano, 560 F. 2d 1384 (C.A. 9); Tatum v. Mathews, 541 F. 2d 161 (C.A. 6); and Johnson v. Mathews, 539 F. 2d 1111 (C.A. 8), which hold that claimants had been denied procedural due process in connection with the termination of their SSI benefits, but that retroactive relief under Section 1631(b) was appropriate only for those claimants found to be statutorily eligible for benefits. Congress simply has not provided for the payment of retroactive benefits in circumstances like those presented here, where the claimants have not, and cannot, demonstrate their statutory eligibility for such payments. Indeed, that is why the Secretary has argued that retroactive relief not only is not required but also is absolutely barred by sovereign immunity (see J.S. No. 77-991, pp. 13-14).

^{2/} Section 1631(b) provides in relevant part:

Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either).

Because no statute requires the payment of retroactive benefits, the district court could properly exercise the broad discretion that normally governs the award of equitable remedies. See, e.g., Hecht Co. v. Bowles, 321 U.S. 321, 329-331. The district court did not abuse its discretion in limiting its remedy to those who are currently needy, and in refusing to burden the Social Security Administration and the taxpayers with the expense of paying retroactive SSI benefits to persons who no longer need them and who are not entitled to them under the statute. Cf. Rothstein v. Wyman, 467 F. 2d 226, 235 (C.A. 2), certiorari denied, 411 U.S. 921 (retroactive payments not required to class members improperly denied benefits under the Aid to Families with Dependent Children Program).

CONCLUSION

This cross-appeal should be held in abeyance pending final disposition of the Secretary's appeal in No. 77-991. If the Court rules in favor of the Secretary in No. 77-991, this cross-appeal should be dismissed. If the Court rules against the Secretary on all issues in No. 77-991, the portion of the judgment challenged in the cross-appeal should be affirmed.

Respectfully submitted.

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